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No. 01-419

IN THE

Supreme Court of the United States

OCTOBER TERM, 2001

CITY OF COLUMBUS, MITCHELL BROWN, and BOBBIE BEAVERS,

Petitioners,

v.

OURS GARAGE AND WRECKER SERVICE, INC., and THE TOWING AND RECOVERY ASSOCIATION OF OHIO,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SUPPLEMENTAL BRIEF FOR RESPONDENTS

DAVID A. FERRIS
CARLILE PATCHEN & MURPHY
366 East Broad Street
Columbus, Ohio 43215
(614) 628-0808

RICHARD A. CORDRAY
Counsel of Record
4900 Grove City Road
Grove City, Ohio 43123
(614) 539-1661

Attorneys for Respondents

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This brief is being filed pursuant to S. Ct. R. 15.8, in order to call the Court's attention to "intervening matter[s] not available at the time of [respondents'] last filing." *Id.* Those intervening matters include: (i) correspondence subsequently filed in *Servantes v. Renne*, Case No. 01-336; and (ii) the full opinion by the California Court of Appeal in that case (including the remaining sections not certified for publication), which was submitted with the correspondence and not previously available to respondents in this case. As discussed below, these matters bear directly on the proper disposition of the petition in this case, which originally was scheduled for disposition at the Court's conference on November 30 but apparently was then deferred for consideration along with the *Servantes* petition.

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1. In the *Servantes* case, respondent City and County of San Francisco has now indicated that it "supports the petition for writ of certiorari" in that case for two reasons. First, it alleges that "the California Court of Appeal [is] in conflict" with the Ninth Circuit and others on "the preemptive reach" of 49 U.S.C. § 14501(c). Letter from Louise H. Renne, City Attorney, to William K. Suter, Clerk of the Court 1 (Nov. 19, 2001). As respondents explained in their brief in opposition filed in this case, the lower court ruling in *Servantes* creates *no* conflict with any other court because it rests on *not one but two* adequate and independent state grounds that would necessitate affirmance in any event. *See* Opp. 10-12 (lower court expressly stated that Servantes' violations of *municipal* towing regulations were redundant of his violations of *state* towing regulations, and that his violations of California's Unfair Competition Act were fully supported by his "unfair business practices" quite apart from whether he had violated *either* state or municipal towing regulations) (quoting *Servantes*, 103 Cal. Rptr. 2d at 881).[1]

Respondent in *Servantes* has now submitted the complete opinion by the California Court of Appeal, including those portions not certified for-publication, which were not previously available to respondents in this case and which further support the conclusion that the court's holding rests on adequate and independent state grounds.

As respondents in this case had pointed out, *see* Opp. 11, the California Court of Appeal had noted in *Servantes* that it was unnecessary to base its ruling on its conclusion that *municipal* towing regulations were not preempted because the same result and all of the same penalties would be fully

[1] Moreover, the papers filed in the *Servantes* case contain no discussion of the important distinction between municipal regulation of *consensual* towing operations and municipal regulation of *nonconsensual* towing operations, which, as respondents in this case have explained, serves to reconcile the lower court decisions that are purported to be in conflict with one another. *See* Opp. 6-16.

sustained on the basis of "Servantes' violations of *state* law, specifically Vehicle Code section 22658." 103 Cal. Rptr. 2d at 881 (emphasis added). This sufficient basis for the court's judgment is bolstered by its further discussion in unpublished part IV of its opinion, where it addresses the sufficiency of the evidence to support the trial court's findings. In this portion of its opinion, the Court of Appeal rests explicitly on the fact that "the trial court based its judgment on Servantes' violations of Vehicle Code 22658," which again are the *state* towing laws. *People ex rel. Renne v. Servantes*, No. A089493, at 16 (Cal. Ct. App. 1st Dist. Feb. 1, 2001) (certified for partial publication; portion not certified), *review denied*, No. S095954 (Cal. May 16, 2001), *cert. pending* (Case No. 01-336). Its examination of the underlying evidence is aimed solely at supporting the trial court's findings that Servantes violated those state regulations on 747 separate occasions. *See id.* at 16-18.[2] In turn, those same 747 violations of *state* towing laws are used in the next unpublished portion of the Court of Appeal's opinion (part V) as the entire basis for upholding the fines imposed under California's Unfair Competition Act. *See id.* at 19-20.

Finally, in the last unpublished portion of its opinion (part VI), the court addressed Servantes' claim that the injunction "prohibiting him from all private property towing in the State of California" was overbroad because the trial court "had no authority to govern his activities outside San Francisco." *Id.* at 20. The Court of Appeal again rejected this claim because he had violated not only municipal towing laws, but also state laws:

> First, Servantes's misconduct constituted violations of state law (Veh. Code, § 22658; Bus. & Prof. Code, § 17200 et seq.). Hence, his reliance on the principle that municipal towing regulations must be confined to

[2] The only mention of any municipal towing laws in this passage is to reinforce an inference of certain additional documentary evidence on one point in order to support the overall sufficiency of the evidence that the state towing laws were repeatedly violated. *See id.* at 17.

> businesses within the local jurisdiction (Veh. Code, § 21100, subd. (g)) is unavailing. The power of the court to enforce state law is not limited by the regulatory effect of the San Francisco ordinance.

Id. at 21. Here again, therefore, the court emphasized that its decision was satisfactorily premised on Servantes' violations of state towing laws without regard to his further violations of municipal towing laws.[3]

The fact that respondent in *Servantes* never sees fit to discuss or even mention the issue of adequate and independent state grounds in its letter filing is unfortunate but irrelevant to this Court's determination of whether that ruling rests on alternative grounds that eliminate any direct conflict with other lower court rulings. Indeed, in *Black v. Cutter Labs.*, 351 U.S. 292, 297 (1956) (per curiam), the Court found it necessary to dismiss the case after oral argument without deciding the merits because it found that the ruling below – though it had addressed important federal constitutional issues under the Due Process and Equal Protection Clauses – actually was supported also by the California state court's rulings on other points of local law. The Court's discussion in *Black* is equally applicable here:

> At times, the atmosphere in which an opinion is written may become so surcharged that unnecessarily broad statements are made. *In such a case, it is our duty to* look beyond the broad sweep of the language and *determine for ourselves precisely the ground on which*

[3] Accordingly, the *Servantes* case does not raise any justiciable issue about the proper application of 49 U.S.C. § 14501(c)(2)(A) to municipal towing regulations and does not conflict with the ruling below in this case. If instead the more extreme claim being made is that *all* state laws of general application (such as antitrust and competition constraints, commercial regulations, trespass laws, and the like) are simply preempted by 49 U.S.C. § 14501(c)(1) as applied to tow-truck operations, then this sweeping claim does not merit review because it implicates no split of authority in the lower courts.

> *the judgment rests*. This means no more than that we should not pass on federal questions discussed in the opinion where it appears that the judgment rests on adequate state grounds.

Id. at 298 (emphasis added).[4] *See also Montana v. Imlay*, 506 U.S. 5 (1992) (per curiam) (dismissing the writ of certiorari after oral argument as improvidently granted); *id.* at 506 (Stevens, J., concurring) ("Thus, no matter which party might prevail in this Court, the [result imposed] will be the same. . . . except, of course, from the potential benefit that might flow from an advisory opinion."); *Florida v. Casal*, 462 U.S. 637 (1983) (per curiam) (dismissing the writ of certiorari after oral argument as improvidently granted where decision below rested on adequate and independent state grounds).

2. In addition, the *Servantes* respondent "supports the petition for writ of certiorari" in that case because, "although the appellate court reached the correct result, San Francisco disagrees with a portion of its analysis." Renne Letter at 1. That, of course, is not a proper basis for seeking or obtaining plenary review from this Court, which "reviews judgments, not statements in opinions." *California v. Rooney*, 483 U.S. 307, 311 (1987) (per curiam) (dismissing the writ of certiorari after oral argument as improvidently granted) (quotation omitted). As the Court aptly explained in *Rooney*, the mere fact that the prevailing party below was not satisfied with the niceties of the lower court's analysis does not give it any claim on the limited resources of this Court: "Here, the judgment of the Court of Appeal was entirely in the State's favor . . . . The fact that the Court of Appeal reached its decision through analysis different

[4] Respondent in *Servantes* apparently did not respond to the petition for review filed in the California Supreme Court. Thus, it is entirely plausible – though impossible to know for certain – that the highest state court itself declined to review the issues raised because the Court of Appeal had identified two alternative grounds for its decision, thus rendering any opinion on these issues purely advisory in nature.

than this Court might have used does not make it appropriate for this Court to rewrite the California court's decision, or for the prevailing party to request us to review it." *Id.*

Moreover, the "portion of its analysis" that the *Servantes* respondent apparently disagrees with is entirely irrelevant to any of the issues that have ever been alleged to merit this Court's review. The *Servantes* respondent claims that the lower court "should have concluded that" 49 U.S.C. § 14501(c) "does not generally preempt . . . state and local towing laws" and thus the safety exception contained in 49 U.S.C. § 14501(c)(2)(A) should never have come into play. Renne Letter at 2. That suggestion is utterly untenable and has been uniformly rejected by the dozens of courts that have considered these statutory issues. It cannot be squared either with the plain fact that a tow truck is a "motor carrier" engaged in "the transportation of property" as defined in subsection (c)(1) or with Congress's own recognition that tow trucks are encompassed within the statute when it enacted a specific exception to preemption limited only to regulations "relating to the price of for-hire [nonconsensual] motor vehicle transportation by a tow truck" in subsection (c)(2)(C). No conflict exists that merits review.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied in this case and in *Servantes*, Case No. 01-336.

Respectfully submitted,

DAVID A. FERRIS
CARLILE PATCHEN & MURPHY
366 East Broad Street
Columbus, Ohio 43215
(614) 628-0808

RICHARD A. CORDRAY
Counsel of Record
4900 Grove City Road
Grove City, Ohio 43123
(614) 539-1661

Attorneys for Respondents

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